

# Part I – Law at the Margins

## European Union and European Identity: Theoretical Approaches in Juridical Logic\*

### 1. Preliminary notes

In contemporary discourse, the concept of identity is profoundly contested—across global geopolitical disputes, national and regional secessionist movements, and cultural and social justice struggles. Within this wider landscape, Europe occupies a central place—particularly in the aftermath of the 2016 Brexit referendum, which prompted a profound reconsideration of both Europe's and the European Union's (EU) foundational identities. These diverse and often spontaneous debates converge into a significant challenge concerning the very meaning of European identity. A generic approach to this identity conundrum is to reference the values articulated in Article 2 of the Treaty on EU:

*"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimi-*

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*mination, tolerance, justice, solidarity and equality between women and men prevail."*

However, this comes with complications. First, the current identity debate emerged precisely within the ambit of Article 2. Secondly, referencing David Hume's philosophical distinction, it is essential to differentiate between the normative aspirations in European law ("what ought to be") and the prevailing reality ("what is").<sup>1</sup> Given the increasing discussions on identity, it is important to bypass simplistic explanations and delve deeper. The pivotal questions surrounding Europe, its inherent identity, and the very essence of the EU might require an alternative analytical lens: maybe a bit more abstract but sufficiently articulated to reveal certain fundamental traits often overlooked. This article intends to embark on a journey reflecting on European identity with a nuanced perspective from legal logic, aiming to move beyond commonplace interpretations.

Before turning to the principle of identity in its logical formulation, it is necessary to clarify why such a detour through logic is warranted in a debate that seems, at first glance, primarily political and legal. References such as Article 2 TEU already presuppose a stable subject—the Union—that can bear values, rights, and obligations. To say that the EU is founded on human dignity or equality, it already assumes that there exists a coherent entity, recognizable the same through time, to which these attributes can be ascribed. In other words, the legal and political discourse on European identity tacitly relies on the logical condition of identity: that there is something which remains itself while undergoing change. Thus, while political

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<sup>1</sup> Hume, D., "A Treatise of Human Nature", Book III, in *Of Morals*, Oxford, Clarendon Press, 1978 [1739-1740], pp. 469-470.

theory or sociology may analyze how identity is constructed or contested, juridical logic addresses a more fundamental question: under what conditions can we even speak of “Europe” or the “EU” as the *same subject* of rights, duties, and values? It is at this level that the principle of identity, one of logic’s most secure foundations, becomes indispensable for the inquiry.

When delving into a concept as intricate as European identity, it becomes imperative to root the analysis in what identity is, beginning from overarching and firm fundaments that set the very preconditions for thought. Thus, if we are to think about the problem of European identity, we must first address the issue of identity from its most secure grounds. Since logic is often conceptualized as a form of meta-cognition – essentially, "thinking about thinking"<sup>1</sup> the foundational principles of logic serve as the most expansive guidelines that direct the process of thought, irrespective of its specific content. These principles are intricately woven into the syntax of both cognitive processes and linguistic expression, forming the paramount framework that determines validity.

The principle of identity implies that at the same time and under the same relation, any logical form (notion, logical proposition, inference) within an act of thought and any object of thought are identical to themselves: *A is A*.

Aristotle is the one who firstly characterized identity as such:

*“The word *Similar*, *Identical*, is used firstly in a casual, fortuitous sense (...) Besides the *Similar*, the casual *Identical*, there is the *Identical in itself*, which is used in as many senses*

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<sup>1</sup> Codrea, C., *Logică juridică. Curs universitar*, Hamangiu, Bucureşti, 2023, p. 11.

as *One in itself has. Because Identical in itself is said about things whose material is one, either as a species, or as a number and also about things whose substance is one. From here, it clearly derives that identity is a sort of unity, a unity of existence of a plurality of that which results from considering many things as one, like when we say that a thing is identical to itself, in which case the same thing is considered as two things.* (...) *Because the contingencies of one thing must be the contingencies of the other.*<sup>1</sup> *"Or, to search why a thing is itself means not searching for anything, because it is necessary that the existence itself of a thing to be self-evident. But the fact that a thing is itself is a matter of a singular reason and a singular cause for everything else."*<sup>2</sup>

This Aristotelian framing highlights identity as a unity that gathers plurality into one, a notion particularly apt for Europe, where the very idea of “Union” presupposes that a multiplicity of peoples, laws, and histories can nevertheless be apprehended as one coherent subject.

Gottfried Wilhelm von Leibniz is the one who phrased the principle of identity in a clear manner:

*“The primitive truths of reason are those which I call by the general name of identical, because they seem only to repeat the same thing without giving us any information. They are affirmative or negative. The affirmative are such as the following: Each thing is what it is, and in as many examples as you please, A is A, B is B. I shall be what I shall be. I have written what I have written. And nothing in verse as in prose,*

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<sup>1</sup> Aristotel, *Topica*, Editura Științifică, București, 1963, *Organon* IV, VII.2, 152a.

<sup>2</sup> *Idem, Metafizica*, Humanitas, București, 2021, VII, 1041a, p. 305.

*is to be nothing or a trifle. The equilateral rectangle is a rectangle. The rational animal is always an animal. And in the hypothetical: If the regular figure of four sides is an equilateral rectangle, this figure is a rectangle. Copulatives, disjunctives, and other propositions are also susceptible of this identicism, and I reckon indeed among the affirmatives: **non-A** is **non-A**. And this hypothetical: if **A** is **non-B**, it follows that **A** is **non-B**. Again, if **non-A** is **BC**, it follows that **non-A** is **BC**. If a figure having no obtuse angle may be a regular triangle, a figure having no obtuse angle may be regular.”<sup>1</sup>*

In Leibniz's rendering, identity risks appearing as a mere tautology, a truth that adds nothing beyond the repetition of the same. Transposed to Europe, this provokes the question: is “European identity” a substantive reality, or merely a definitional assertion—an EU that is what it is—without deeper content?

From a syntactical perspective, the principle of identity postulates that for logical reasoning to be considered valid, it must engage solely with rigorously defined concepts. This sentiment finds resonance in Aristotle's observation: “*it is impossible to think if you are not thinking of a certain thing. Therefore, a word has to have a meaning, and a strict one.*”<sup>2</sup> This necessitates that such concepts maintain a consistent alignment with tangible entities in the empirical world. On a semantic plane, the principle of identity mandates that when a logical proposition is affirmed as true, a direct correspondence must be established between the declaration and its representation in reality. In ontological terms,

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<sup>1</sup> Leibniz G.W., *New Essays Concerning Human Understanding*, The Open Court Publishing Company, Chicago–London, 1916, pp. 404-405.

<sup>2</sup> Aristotel, *Metaphysica*, *op. cit.*, p. 305.

this principle emphasizes the intrinsic self-consistency of an entity, suggesting that an object is invariably equivalent to itself, and if it exhibits a specified characteristic, then it undeniably possesses that characteristic.<sup>1</sup>

But the identity principle, a fundamental pillar of logic, a pillar for thinking itself, already anticipates in its explanations certain difficulties, more in Aristotle than in Leibniz: it implies immobility, because that which belongs to an ever changing reality and is caught in thinking must not change. If that immobility is an actual impossibility, identity is restricted to mere truisms or tautologies which do not say anything about reality since we left out the changes, modifications, transformations. If we accept an ever changing reality, the consequence is *res de re non predicatur*: there is nothing we can say about things in reality.

However, if affirming identity, *A is A*, does not express properties of things in reality, nor affirming something about existence, nor the identification process, then it must indicate a sort of resistance: there is a something about the object in reality which we think about, which has a core that exists in spite of the ever changing reality of contingencies, incidents, accidents. Identity therefore presupposes selection and fixation: *A is A*, not in the sense that *A* exists, but in the sense that *A* still is, *A* remains as *A* and not something else, in spite of *A* changing.<sup>2</sup> We can easily substitute here the object of thinking, *A*, with *Europe* or *EU*.

Nevertheless, in logic itself the principle of identity encountered many issues. For example the logician Saul Kripke,

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<sup>1</sup> Codrea, C., *Logică juridică. Curs universitar, op. cit.*, pp. 42-43.

<sup>2</sup> Botezatu, P., *Introducere în logică*, Polirom, Iași, 1997, pp. 28-29.

who developed the relational or possible-world semantics for modal logic and later reformulated in philosophical terms the distinction between necessity and contingency, restates the claim that: *“The fact that a certain object has a specific property, necessarily or contingently, depends entirely on the manner in which it is described. If an object has the same property in all possible worlds it depends not only of the object itself, but also of the way in which is described. A possible world is given by the descriptive conditions which we associate with it.”*<sup>1</sup> *“Indeed, the necessary and sufficient conditions for identity in order for it to not become circular are very rare in each case. To be honest, mathematics is the only case that I know in which these conditions are given even within a possible world. I do not know other conditions for the identity of any other objects in reality – be it material or human beings”*.<sup>2</sup> Kripke’s perspective engages the difficulty that identity appears to depend not solely on the object itself but on the descriptive conditions by which it is apprehended. In the European context, this means that “Europe” or the “EU” may not possess identity in an absolute sense but only in and through the shifting narratives, treaties, and political discourses that describe and redefine it across time.

So we wanted to make sure we start approaching the problem of identity from the most secure grounds, from logic itself, and from one of its most broad and firm principles, the principle of identity, and we ended up in a web of issues such as change, core or essence as a fixation and resistance in time in spite of becoming, and not ontological objects that simply exist but linguistic means through which such objects receive, are given, are attributed identity through descriptions. Thus, the

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<sup>1</sup> Kripke, S., *Numire și necesitate*, Polirom, Iași, 2021, pp. 55-56.

<sup>2</sup> *Ibidem*, pp. 58-59.

logical debates surrounding identity—whether understood as tautological stability, as unity amidst plurality, or as description-dependent across possible worlds—are not mere abstractions but mirror the very challenges faced by Europe and the EU. Just as logic wrestles with the tension between permanence and change, or between essence and contingent description, so too does the Union confront the task of maintaining a recognizable core while undergoing continual transformation. The principle of identity therefore offers not only a formal foundation for thought but also a conceptual key to understanding how Europe can remain “the same” across political crises, enlargements, and internal contestations, without collapsing either into empty tautology or into dissolution.

## **2. The Ship of Theseus, Leibniz, Hobbes and Alan Gibbard's contingent identity**

The Ship of Theseus, rooted in Greek mythology, provides a profound contemplative backdrop against which we can explore issues related to identity and continuity over time. Theseus, the legendary Greek king and founder of Athens, is renowned for his daring escapade where he saved Athenian youth from the clutches of King Minos, subsequently retreating on a ship to Delos.

Plutarch, the renowned ancient historian, offers a detailed account of this ship's subsequent fate: *“The ship wherein Theseus and the youth of Athens returned from Crete had thirty oars, and was preserved by the Athenians down even to the time of Demetrius Phalereus, for they took away the old planks as they decayed, putting in new and stronger timber in their places, insomuch that this ship became a standing example among the philosophers, for the logical question of*

*things that grow; one side holding that the ship remained the same, and the other contending that it was not the same.”<sup>1</sup>*

This narrative subsequently evolved into a philosophical conundrum. As the Athenians replaced the deteriorating wooden parts of the ship with new timber, it raised an unsettling question about identity and persistence: Does an object retain its original identity if its constituent components are replaced over time? The Ship of Theseus, as noted by Plutarch, became emblematic of this debate, with philosophers divided — one camp asserting that despite the replacements, the ship's identity remained intact, while the other argued that it had transformed into something fundamentally different. This ancient thought experiment continues to fuel modern discussions on the philosophy of identity and the nature of objects in flux.

Plutarch underlines here the problem of identity as the relation that a thing bears only to itself in the context that things change in time. If we transpose this form to the problem of identity of Europe and of the EU we can see there are several political organizations which include the word ‘European’: The Organization for European Economic Co-operation founded in 1948 and which became in 1961 by the Organization for Economic Co-operation and Development, currently with 38 states, The Council of Europe, founded in 1949 currently with 46 states, The Organization for Security and Co-operation in Europe currently with 57 states, The European Free Trade Association, founded in 1960 currently with 4 states. This plurality of organizations already illustrates a profound ambiguity. If each of them can legitimately claim the name “European”, then what,

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<sup>1</sup> Plutarch, “Life of Theseus”, in Scot-Kilvert, I., *The Rise and Fall of Athens: Nine Greek Lives*, Penguin, Harmondsworth, 1960, 23.1.

precisely, does “European” signify? Does the term indicate a stable essence that persists regardless of membership and scope, or is it merely a conventional designation whose meaning shifts with political usage? Much like the Ship of Theseus, the name remains constant even as the underlying structure changes—sometimes including nearly all European states, sometimes only a few, and sometimes even extending beyond Europe’s geographical boundaries. The persistence of the label conceals the instability of its referent, raising the question of whether “Europe” is a substantive identity or a contested title applied to divergent institutional forms.

All of these international political organizations include some of the European states but not all, and also states from other continents. Are these organizations European and if so, what makes them European? If they are as such, in what sense are they European? Is it the name they give themselves, is it the member states they include, is there something else?

We can look further at the beginning of post-war European construction: European Coal and Steel Community, founded in 1952 with 6 states, European Economic Community and European Atomic Energy Community (Euratom) founded in 1958 and all the political changes that came through treaties such as the 1986 Single European Act, the 1985 Schengen Agreement and 1990 Convention Implementing the Schengen Agreement. In what sense are these European?

We can even look closer and more focused on the EU at the gradual enlargement of the European communities and the subsequent integration of more and more states and even at the 2020 Brexit: was the EU of the 1992 Maastricht Treaty less European than the EU revised by treaties such as the 1997 Amsterdam Treaty, the 2001 Nice Treaty or the 2007 Lisbon

Treaty? But can we speak of the same EU in this whole process? This succession of treaties and enlargements shows that even when the label “European Union” remains constant, the entity it designates is never quite the same. Institutions are reconfigured, competences redistributed, and membership altered – yet the name persists, concealing a transformation as radical as replacing planks in the Ship of Theseus. The continuity of the label suggests stability, yet the underlying referent changes with each reform. The EU’s identity can therefore be understood either as the persistence of an essential quality that endures despite institutional transformation, or as a conventional designation imposed upon a shifting configuration of states and treaties.

So there are three questions regarding identity in front of this avalanche of political and legal changes:

1. What, then, is “Europe” itself—what identity does it possess beneath the changing forms that claim its name?
2. What does it mean to call something “European”—is this an essence that persists or a set of shifting attributes?
3. And, finally, if the Union is both the most ambitious and most fragile of these forms, what is the identity of the EU as it moves through enlargement, treaty reform, and rupture?

In this puzzle, Leibniz might help with his *“principium identitatis indiscernibilium”*, the principle of the identity of indiscernibles, which states that “things qualitatively undistinguishable are absolutely identical”<sup>1</sup> meaning that any two things are identical if they share all of the same properties. Applied to the

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<sup>1</sup> Leibniz, G.W., *op. cit.*, p. 332.

Ship of Theseus, the solution is this: at the very moment the first plank was replaced it was not the same ship anymore. If the parts were not all original, with each new plank, the ship acquired a new property and as such, a new identity. Therefore, if we follow Leibniz, there is no such thing as a single Europe, neither in history nor in the present. It is a logical impossibility, because Europe as broadly as we might define it – in cultural terms – is ever changing, it is just like the Ship of Theseus with its parts always changing. It also implies that there is no single European identity from the proposal of Robert Schuman of founding the European Coal and Steel Community to the current EU. Each step in the post-war European construction implied a series of distinct, separate identities, since not only the parts of these European Communities changed, more states joining them, but these Communities themselves have different goals, scopes and institutions. Seen in this light, the EU's claim to historical continuity becomes a paradoxical fiction: institutions and treaties invoke the idea of “an ever closer union”, yet Leibniz's principle would insist that the Union at each stage is no longer the same entity but a qualitatively new one. What presents itself politically as a continuous unfolding of European integration is, under logical scrutiny, a sequence of discrete, non-identical Unions, each with its own configuration of members, aims, and structures. Europe, then, resembles not a single persisting object but a succession of overlapping constructs, bound together only by the insistence that they are “the same.” In this sense, the European project resembles not one enduring ship but a succession of vessels, each claiming continuity through the same name while embodying a different structure. The paradox of Theseus' ship thus resurfaces in the EU: the more it changes, the

more insistent becomes the claim that it has remained the same, a claim that logic itself refuses to endorse.

Even closer in time, the EU of the 1992 Maastricht Treaty is different from the EU of the 1997 Amsterdam Treaty, the 2001 Nice Treaty or the 2007 Lisbon Treaty not only because it does not include all the original states, since the integration of new member states continued and is still a political goal, but even the institutions themselves have changed. More recently, the EU after the 2020 Brexit is not the same as EU with United Kingdom (UK) as a member, it does not have the same identity. Let us complicate things even further, and assume the position of Thomas Hobbes: what if all the old replaced planks of the Ship of Theseus would be recovered and used to build a ship similar to the Ship of Theseus which now has all the planks replaced.<sup>1</sup> Would we then have the ship with the parts gradually changed and the reconstructed one as two identical ships?<sup>2</sup> This mental experiment would approximatively translate in the matter of European identity through this process: a general dissolution of the current EU following the Brexit model, and a re-configuration of the same European states in an exact similar EU. But would it be the same? The answer is no: these two political entities, no matter how similar they would seem, do not share the same identity. So if we follow Hobbes and Leibniz and their perspectives on identity we might have to ask if there is a limit to how much something can change and not lose its identity. Hobbes' variation forces the paradox even further: if two ships

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<sup>1</sup> Hobbes, T., "De Corpore", in *The English Works of Thomas Hobbes of Malmesbury*, Vol. I, (eds.) Molesworth, W., Bohn, J., London, 1839, Book II, Chapter 11, pp. 120-122.

<sup>2</sup> Gallois, A., *The Metaphysics of Identity*, Routledge, London–New York, 2016, p. 29.

each lay claim to Theseus' name, neither can secure exclusive authenticity, and identity dissolves into the problem of rival claimants. Transposed to Europe, this suggests that even if a new Union were built from the same parts, its claim to be the "same EU" would stand on nothing firmer than convention and political will. For Europe, this means that identity cannot be reduced to the mere presence of certain states or institutions. Even if tomorrow the same member states were to reassemble in a body that replicated the EU's treaties and institutions, it would not be the same Union, because the thread of continuity had been severed. Hobbes thus underscores the role of historical persistence and institutional memory in preserving identity. The EU's treaties are not just legal frameworks but anchors of continuity: without them, any new configuration, however similar, would constitute a different political entity altogether.

A thought experiment proposed by Alan Gibbard delves into the perplexing interrelationship between similarities and its implications for identity, offering illuminating perspectives for an aspirational trajectory of European integration.<sup>1</sup> Envision a scenario wherein a sculptor procures a mass of clay, nominally designated as 'Europe'. From this substrate, a statue is carved, christened as the 'European Union'. This raises the salient question: are the constructs 'Europe' and 'European Union' congruent in essence? At a *prima facie* level, one might posit an affirmative, grounded in their shared material composition. Despite overt transformations, the clay invariably informs the entirety of the statue, and no fragment of the statue stands devoid of this clay. This engenders a concept of "contingent

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<sup>1</sup> Gibbard, A., "Contingent Identity", in *Journal of Philosophical Logic*, Vol. 4, No. 2 (May 1975), pp. 187-190.

identity".<sup>1</sup> Drawing a parallel, it suggests that the EU is wholly enveloped by Europe, with no constituent element of Europe existing beyond the purview of the EU. However, a potential deconstruction of the statue, regressing it to its elemental clay, results in the cessation of the statue's existence, contingent on its delineated form, symbolic of the 'European Union'. Conversely, the malleable essence of 'Europe', unshackled by formative constraints, persists. While in an idealized context the clay and statue might be construed as identical, given their shared material essence albeit with different forms, their identity is challenged by the potential non-coexistence of one in the absence of the other.

Applying this conceptual framework to the European paradigm, while it may be accurate to state that the EU is integrally European, the claim that Europe is entirely encapsulated by the EU is not wholly accurate in contemporary contexts. This viewpoint is further corroborated by Article 49 of the Treaty on the EU, which underscores the potential for the Union's continued enlargement. This article stands as testament to the distinction between the geographical and cultural entity of Europe and the political structure of the EU, indicating that Europe's identity is not solely defined by its Union membership. Here too the Ship of Theseus lingers in the background: the clay persists even as the statue may crumble, just as Europe endures while particular forms of union arise and pass away. Gibbard's contingent identity reminds us that the EU may be one powerful configuration of Europe's substance, but never its totality.<sup>2</sup>

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<sup>1</sup> Jubien, M., "Statues and lumps of clay", in *Ontology, Modality, and the Fallacy of Reference*, Cambridge University Press, Cambridge, 1993, pp. 37-40.

<sup>2</sup> Gibbard, A., *op. cit.*, pp. 187-222.